IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

**O R D E R**

Guddi. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 727/2006
against the order dated 22-5-2006 passed
by the Additional Sessions Judge, Nohar,
in Criminal Revision No.33/2006.
...

Date of Order: November 22, 2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R. PANWAR**

Mr. N.L. Joshi, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Hamir Singh Sidhu, for the non-petitioner No.2.

**BY THE COURT:**

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 22-5-2006 passed by the Additional Sessions Judge, Nohar, district Hanumangarh (for short, "the Revisional Court" hereinafter), whereby the revision petition filed by the petitioner against the order dated 17-4-2006 passed by the Sub-Divisional Magistrate, Nohar (for short, "the Executive Magistrate" hereinafter) was

dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the Revisional Court as well as the Executive Magistrate.

It is contended by the learned counsel for the petitioner that the Executive Magistrate fell in error in ordering the attachment of the land, which is the subject-matter of dispute and appointing the Receiver without there being any material to show that the situation is emergent. According to the learned counsel, the requirement of sub-section (1) of Section 146 of the Code has not been fulfilled.

Learned counsel for the non-petitioner No.2 supported the order impugned and contended that the Executive Magistrate, on the basis of material placed before it, prima facie was satisfied that with regard to possession of the land, which is the subject-matter of dispute, there is every likelihood of commission of breach of peace and the parties to the proceedings are bent upon to commit breach of peace and on perusal of the complaint and the documents filed along with it and upon hearing the Station House Officer concerned, prima facie came to the conclusion that the situation is emergent in nature and, therefore, the Executive Magistrate thought it proper to attach the land which is the subject-matter of dispute and appointed the Tehsildar, Nohar as the Receiver.

From a careful perusal of the order impugned, it appears that the Executive Magistrate drew the preliminary order under sub-section (1) of Section 145 of the Code satisfying himself from the police report that there exists dispute between the parties which is likely to cause breach of the peace. The Executive Magistrate, after making the preliminary order under sub-section (1) of Section 145 of the Code, prima facie considered the case to be one of emergent nature and, therefore, in exercise of the power under sub-section (1) of Section 146 of the Code, attached the land in dispute and appointed the Receiver.

It is contended by the learned counsel for the petitioner that in the order of the Executive Magistrate, it has not been stated about the fact constituting emergent situation. In my view, it is the subjective satisfaction of the Executive Magistrate that the Executive Magistrate, on the information received by him, as also considering the documents placed before it that a dispute likely to cause breach of peace exists concerned the land and if the Executive Magistrate is satisfied then under sub-section (1) of Section 145 of the Code, a preliminary order is to be drawn. If the Executive Magistrate is also satisfied on the basis of material placed before it and considers the case of emergency and if he is satisfied that none of the parties was in possession of the disputed land or if he is

unable to satisfy himself as to which of them was then in possession of the subject of dispute, he may attach the subject-matter of dispute until a competent Court determines the rights of the parties thereto with regard to the person entitled to the possession thereof, he may attach the land and appoint the Receiver.

In my view, both the Courts below concurrently found that before the Executive Magistrate, there was an emergent situation warranting attachment and, therefore, the order impugned cannot be said to have resulted in serious miscarriage of justice or abuse of process of the Court warranting interference in the inherent jurisdiction. It is settled law that the powers under Section 482 of the Code are to be exercised sparingly, cautiously and in exceptional cases where it is brought to the notice of the Court that the order impugned would result in serious miscarriage of justice or abuse of process of the Court. The instant is not a case of any such nature. However, it is always open for the petitioner to move Executive Magistrate under proviso to sub-section (1) of Section 146 of the Code seeking withdrawal of attachment showing that there is no likelihood of breach of peace with regard to the subject-matter in dispute and if such a petition is moved, the Executive Magistrate may decide the same in accordance with the provisions of law.

With these observations, the criminal miscellaneous

petition stands dismissed. Record of the Court of the Executive Magistrate be returned forthwith and the Executive Magistrate is directed to dispose of the proceedings utmost expeditiously.

(H.R. PANWAR), J.

mcs